



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Bascom Giles
Commissioner, General Land Office
Austin, Texas

0-6398

Dear Sir:

Opinion No. 0-6398

Re: Requirements of Article 5368,
V. A. C. S., relative to roy-
alty payments to State on lands
sold subject to the terms of the
Relinquishment Act.

Reference is made to your request for an
opinion, which is as follows:

"Article 5368, Revised Civil
Statutes, defines the royalties reserved
to the State on lands sold under the Re-
linquishment Act.

"I would like to have your opinion
on the following question. Does the reser-
vation in Article 5368 contemplate the pay-
ment of royalty on all the oil and/or gas
produced, saved, sold, or used on a 100%
basis, or can the agent of the State execute
a lease, binding on the State, that provides
for the free use of oil or gas that is used
by the operator on the lease for development
of the lease or lease operations?"

Article 5368, Vernon's Annotated Civil
Statutes, governs the terms of a lease on land sold
subject to the terms of the Relinquishment Act. It is
provided in Article 5368, in part, as follows:

"No oil or gas rights shall be sold
or leased hereunder for less than ten cents

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per acre per year plus royalty. . . and in case of production shall pay the State the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil."

The Relinquishment Act was interpreted by the Supreme Court in the case of *Greene v. Robison*, 8 S.W. (2) 655. Section 2 of the Act, which relates to your question and codified as Article 5368, is interpreted in the court's opinion on page 660 in this manner:

"We interpret the Act to fix a minimum price of 10 cents per acre per annum and the value of one-sixteenth of the gross production free of cost to the State, for which the State is willing to sell the oil and gas. . ."

The use of the term "the value of one-sixteenth of the gross production free of cost. . ." as is used in the case of *Greene v. Robison*, must be given the same meaning as the term "free royalty" as is used in the 1931 Sales Act. Article 5421C, V. A. C. S.

In the case of *Winterman v. McDonald*, 102 S. W. (2) 167, Justice Sharp defines the term "free royalty" as follows:

"The term 'free royalty' introduced into this Act must mean that the interest reserved to the state and minerals produced on school lands sold under the terms of the Act must not bear any expense of the production, sale or delivery thereof."

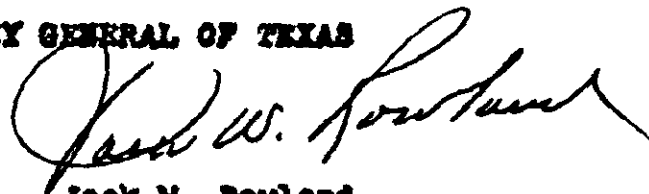
It is our opinion that your question has been answered by the Supreme Court of this State. We, therefore, advise you that the statutes relating to this question require that the State receive its share of the value of production on a 100% basis, free from deductions of any kind or use of any character. This is true whether the mineral reservation in the lease be the minimum of 1/16th required by law or for a larger amount reserved by the surface owner as agent of the State. It follows that the surface owner as agent of the

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State may not enter into a lease contract providing for the payment of the State's interest in production on any other basis.

Yours very truly

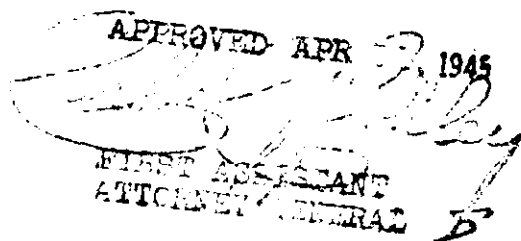
ATTORNEY GENERAL OF TEXAS



By

Jack W. Rowland
Assistant

JWR:BT

APPROVED APR 2, 1945

FIRST ASSISTANT
ATTORNEY GENERAL

